

CITY OF MIAMI BEACH
Office of the City Manager
Letter to Commission No. 085-2004



To: Mayor David Dermer and
Members of the City Commission

Date: April 20, 2004

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge M. Gonzalez".

Subject: SIDEWALK CAFES IN FDOT'S RIGHT-OF-WAY

According to the Florida Department of Transportation (FDOT) regulations, the operation of sidewalk cafes within FDOT's right-of-way is considered illegal. For several years through letters, e-mails and telephone conversations, City staff has been working with FDOT to create an agreement so the sidewalk cafes in FDOT's right-of-way can continue to operate.

Throughout the course of meetings and discussion, FDOT insisted that the only way it would allow the operation of sidewalk cafes was for the City to lease from FDOT entire blocks of sidewalks where the sidewalk cafes are located. As a condition of the lease agreement, the City would assume maintenance and repair responsibility, plus legal liability on these blocks of sidewalks. An agreement could not be reached since the City was not willing to assume the significant costs of maintenance and liability and FDOT would not change its position.

After the Commission meeting on April 14, 2004, it was discovered that FDOT and the City had entered into an Agreement in 1993 as part of the North Beach Streetscape Improvement project. This information was not known or discussed in earlier conversations with FDOT. Under the terms of this Agreement, copy attached, the City agreed to assume liability for, to inspect the construction of, and to routinely and periodically maintain the sidewalk portion of the streets which have been constructed and modified in accordance with the North Beach Streetscape Improvement project. Therefore, the City is already responsible to maintain and has the liability along Collins Avenue sidewalks from 1500 feet south of 63rd Street (Alton Road) to 75th Street; and on 71st Street and Normandy Drive from Collins Avenue to Rue Notre Dame.

The City Administration is currently working with FDOT's local administration to expedite the processing of a Lease Agreement for those two corridors in North Beach and expects to bring the agreement for Commission action as soon as possible. The City is still exploring options to address and reduce our long term costs.

The issue of maintenance and liability responsibility still remains open for further discussion and resolution for sidewalk cafes located outside the corridors already covered by existing FDOT and City Agreement; however, it must be noted that the number of sidewalk cafes operating outside of North Beach in FDOT's right-of-way currently is minimal.

Following Commission discussion, Commissioner Steinberg has made arrangements to discuss this issue with the Governor's office in Tallahassee.

Please feel free to contact me if you have any other concerns or questions.


JMGRSMITH

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COLLINS AVENUE AGREEMENT

THIS AGREEMENT, entered into this 23rd day of MARCH 1993, by and between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter referred to as the DEPARTMENT and the CITY OF MIAMI BEACH a municipal corporation of the State of Florida, hereinafter referred to as the "CITY".

W I T N E S S E T H

WHEREAS, the CITY is embarking on a program to beautify and enhance streets within the corporate limits of the CITY; and

WHEREAS, the Commission of the City of Miami Beach, is implementing a NORTH BEACH STREETScape IMPROVEMENT PROJECT along COLLINS AVENUE public right-of-way / from 1500 feet south of 63rd Street (ALTON ROAD) to 75th Street; and on 71st STREET and Normandy Drive from Collins Avenue to Rue Notre Dame. ("NORTH BEACH STREETScape IMPROVEMENT PROJECT"), which includes sidewalk improvements ("SIDEWALK IMPROVEMENTS").

WHEREAS, the CITY and the DEPARTMENT mutually recognize that the maintenance portions of the State Highway System affected by this program would be more efficiently and effectively performed by the CITY; and

WHEREAS, the CITY, and the DEPARTMENT mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of the parties to this agreement.

NOW THEREFORE, for and in consideration of the covenants herein contained, it is mutually understood and agreed as follows:

1. The following terms as used in this agreement are defined as follows:

"STREETS" - the portion of State Road 11A (Section 87060), also know as COLLINS AVENUE, from 1500 feet south of 63rd Street to 75th Street, and also State Road 934 (Section 87080), also known as 71st STREET and Normandy Drive from Collins Avenue to Rue Notre Dame.

"STATE HIGHWAY SYSTEM" - Those roads which are the jurisdictional responsibility of the DEPARTMENT as established pursuant to Florida Statutes.

"ROADWAY PORTION" - The portion of the STREET or HIGHWAY for the intended use of vehicles. This would normally include the travel lanes, curb, parking lanes, drainage and any special lanes for the movements of vehicles.

"SIDEWALK PORTION" - The portion of the STREETS which are not required for the movement of vehicular traffic and are intended for the movement of pedestrian traffic and may include landscape features such as trees, grates, and any decorative features such as sidewalk and cross-walk brick pavers, decorative light poles, signs not related to traffic control, benches - if these items are proposed by the CITY.

2. The CITY agrees to assume liability for, to inspect the construction of, and to routinely and periodically maintain the SIDEWALK PORTION of the STREETS which have been constructed and

modified in accordance with the NORTH BEACH STREETSCAPE IMPROVEMENT PROJECT.

3. The DEPARTMENT agrees to routinely and periodically maintain the ROADWAY PORTION of the STREETS less the landscape features and decorative items and to be responsible for the operation of this ROADWAY PORTION. Further, the DEPARTMENT agrees to routinely and periodically maintain the SIDEWALK PORTION of the STREETS that have not been modified in accordance with the NORTH BEACH STREETSCAPE IMPROVEMENT PROJECT.

4. If, at any time during the term of this agreement it shall come to the attention of the DEPARTMENT that the CITY is not meeting its obligations with respect to maintenance of the SIDEWALK PORTION of the STREETS, the DEPARTMENT shall give the CITY written notice of such deficiencies in maintenance and operation. Thereafter, the CITY shall have a period of thirty (30) calendar days from the date of notice within which to correct the cited deficiencies. In the event the CITY fails to respond to the notice, or, does not make sufficient progress towards remedying the deficiencies then the DEPARTMENT shall have the right, but not the obligation, to correct the deficiencies, and, in the event the DEPARTMENT does so correct the deficiencies, the CITY shall pay the DEPARTMENT all of its reasonably incurred costs in connection with such work within forty-five (45) days of receipt of an invoice from the DEPARTMENT.

5. The CITY, and the DEPARTMENT each bind themselves and their successors to the obligations respectively assumed by each hereunder.

6. To the extent permitted by laws, but only to the limits set forth in Florida Statutes, Section 768.28 the CITY covenants and

agrees that it will indemnify and hold harmless the DEPARTMENT and all of the DEPARTMENT's officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the CITY in the performance of this AGREEMENT. Neither the CITY nor any of their officers, agents or employees will be liable under this section for damages arising out of injury or damages to persons or properties directly caused or resulting from sole negligence of the DEPARTMENT or any of its officers, agents or employees.

7. This agreement or part thereof is subject to termination upon mutual agreement by all parties.

The terms of this agreement shall commence upon completion of construction and shall continue until termination in accordance with the above.

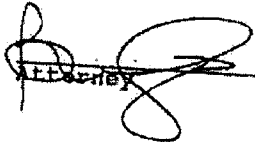
8. This writing embodies the entire AGREEMENT and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of the AGREEMENT shall be valid unless made in writing and signed by each party hereto. This AGREEMENT, regardless of where signed shall be governed and constructed according to the laws of the State of Florida.

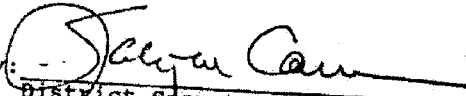
9. Attached hereto is a certified copy of a Resolution of the CITY of Miami Beach Commission authorizing the Mayor to enter into this AGREEMENT designated Exhibit "A" and by this reference made a part hereof.

IN WITNESS THEREOF, the parties hereof set their hands and seals the day and year first above written.


STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

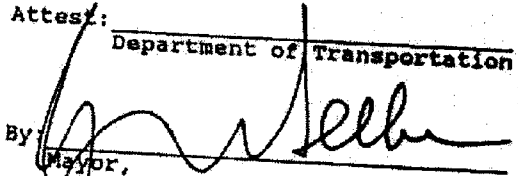
Approved as to Form & Legality:

 3/23/93
Attorney Date

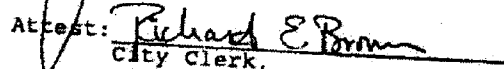
By: 
District Secretary,
Department of Transportation

Approved as to Form:

 1/27/93
City Attorney

Attest: 
Department of Transportation

By: 
Mayor,
City of Miami Beach

Attest: 
City Clerk,
City of Miami Beach

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A COLLINS AVENUE AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MIAMI BEACH PERTAINING TO MAINTENANCE OF THE PORTION OF THE STATE HIGHWAY SYSTEM AFFECTED BY THE NORTH BEACH STREETSCAPE IMPROVEMENT PROJECT

WHEREAS, the City of Miami Beach ("City") is embarking on a program to beautify and enhance streets within the corporate limits of the City; and

WHEREAS, the Commission of the City is implementing a NORTH BEACH STREETSCAPE IMPROVEMENT PROJECT along Collins Avenue public right-of-way from 1500 feet south of 63rd Street (Alton Road) to 75th Street; and on 71st Street and Normandy Drive from Collins Avenue to Rue Notre Dame, which includes sidewalk improvements; and

WHEREAS, the CITY and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION ("DEPARTMENT") mutually recognize that the maintenance of the portions of the State Highway System affected by this program would be more efficiently and effectively performed by the CITY; and

WHEREAS, the CITY, and the DEPARTMENT mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of the parties to this agreement.

WHEREAS, the City Manager recommends approval of the attached Collins Avenue Agreement and the City Attorney has approved it as to form.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Clerk are authorized to execute a Collins Avenue Agreement between the State of Florida Department of Transportation and the City of Miami Beach pertaining to maintenance of the portion of the State Highway System affected by the NORTH BEACH STREETSCAPE IMPROVEMENT PROJECT.

PASSED AND ADOPTED THIS 3rd DAY OF February 1993.

ATTEST:

Richard E. Brown
City Clerk

[Signature]
Mayor

FORM APPROVED:

[Signature]
Legal Department

RMB 1/27/93

RMC/RAG/b
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STATE OF FLORIDA
COUNTY OF DADE:

I, RICHARD E. BROWN, City Clerk of the City of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS: my hand and the seal of said City this 27th day of February A.D. 1993

RICHARD E. BROWN
City Clerk of the City of Miami Beach, Florida

[Signature]
By: Deputy

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH FLORIDA 33139



OFFICE OF THE CITY MANAGER

TELEPHONE: (305) 675-7010
FAX: (305) 675-7700

COMMISSION MEMORANDUM NO. 74-93

TO: Mayor Seymour Galber and
Members of the City Commission

DATE: February 3, 1993

FROM: Roger M. Carlton
City Manager *RM Carlton*

SUBJECT: AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND THE
FLORIDA DEPARTMENT OF TRANSPORTATION TO MAINTAIN THE
SIDEWALK IMPROVEMENTS ON STATE RIGHT-OF-WAY
IMPLEMENTED AS PART OF THE NORTH SHORE COMMUNITY AREA
IMPROVEMENTS, NOW KNOWN AS NORTH BEACH STREETScape
IMPROVEMENT PROJECT.

ADMINISTRATION RECOMMENDATION:

The Administration recommends that the City of Miami Beach enter into an Agreement with the Florida Department of Transportation to maintain certain City improvements on the sidewalk area of the State right-of-way implemented as part of the North Shore Community Area Improvement Project, now known as the North Beach Streetscape Improvement Project.

BACKGROUND

On December 16, 1992, the City entered into a Joint Participation Agreement with the Florida Department of Transportation relating to combining the FDOT Collins/Abbott/Harding Avenues Milling and Resurfacing Project with the City of Miami Beach North Shore Community Area Improvement Project, now known as the North Beach Streetscape Improvement Project, and outlining FDOT costs and a scheduled manner of reimbursement to the City of Miami Beach. As indicated in the attached correspondence and as required on other similar projects (41st Street from Collins Avenue to Alton Road), the State requires a maintenance agreement for those improvements above and beyond normal State Construction Standards relating to the sidewalk portion of the project.

CONCLUSION

In keeping with Florida Department of Transportation policies on projects of this nature and in keeping with the intent of the Interlocal Agreement, it is recommended that the City Commission authorize entering into the maintenance agreement for the North Shore Area Improvement Project, now known as the North Beach Streetscape Improvement Project.

RMC/RAG/et

Attachment

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AGENDA
ITEM

R-7-F

DATE

2-3-93